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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,639	01/04/2002	Ronald J. Scherer	3616.213US01	9187
23552	7590	12/13/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HECKENBERG JR, DONALD H	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/038,639	Applicant(s) SCHERER ET AL.	
	Examiner Donald Heckenberg	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-35 and 62-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-28, 35, 62 and 63 is/are rejected.
- 7) ☒ Claim(s) 29-34 and 64 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 01 June 2005 has been entered.

2. The indicated allowability of claims 24-35 is withdrawn in view of the newly discovered reference to Bergeron et al. (U.S. Pat. No. 6,425,751). Rejections based on the newly cited reference follow.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claim 24, 25, 28, and 35 are rejected under 35

U.S.C. 102(e) as being anticipated by Bergeron et al. (U.S. Pat. No. 6,425,751).

Bergeron discloses an apparatus for molding blocks. The apparatus comprises a plurality of side walls (32) defining a mold cavity (24) having an open top (36) and an open mold bottom (38). 1). A pallet (16) having a flat surface temporarily closes the entire open bottom of the mold cavity (see Fig. 1).

As can be seen in Figs. 4 and 5, one of the side walls includes an undercut adjacent the open mold bottom, the undercut being formed underneath a projecting portion (82) that is formed in the vertical side wall. Thus, the undercut and a portion of the flat surface of the pallet define a flange-forming subcavity that forms a flange structure on the resultant block (note shape of molded blocks in Figs. 2 and 3).

Bergeron further discloses the mold assembly to include a stripper shoe (58) having a face that comprises a pattern (see Fig. 1). The stripper shoe is introduced into the mold cavity through an open top of the mold to press the patterned face of the stripper shoe onto the concrete being molded in the cavity (see Fig. 1).

Bergeron still further discloses the mold assembly to comprise a plurality of cavities that operate with a single

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pallet to mold a plurality of blocks at the same time (see for example, Fig. 1).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered

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therein were made absent any evidence to the contrary.

Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 26, 27, 62, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeron in view of Woolford (U.S. Pat. No. 5,249,950).

Bergeron discloses the block molding apparatus as described above, notably including a stripper shoe with a pattern to be imparted upon the molded block. Bergeron does not disclose the pattern to specifically be as such to simulate natural stone, or comprise a flange as recited in claims 26, 27, and 63. The pattern of the stripper shoe, however, is merely indicative of the pattern to be imparted to the molded block, and hence, a matter of design choice. Correspondingly, Woolford notes in disclosing a stripper shoe assembly that the pattern can take any number of designs or forms such as ornamentation or structural features consistent with the block to be formed within the mold (cl. 3, ll. 41-44). Thus, it would have been obvious to one of

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ordinary skill in the art at the time of Applicant's invention to have modified the stripper shoe to include a flange or natural stone pattern because the shape of the pattern is a design choice simply based upon the desire features to be imparted upon the molded block as suggested by Woolford.

9. Claims 29-34 and 64 are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith, can be reached at (571) 272-1166. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval

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(PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

 12-12-5
Donald Heckenberg
Primary Examiner
A.U. 1722